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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/667,170	09/20/2000	Steven G. Reed	210121.475C7	8291

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EXAMINER

MARTINELL, JAMES

ART UNIT

PAPER NUMBER

1631

DATE MAILED: 09/16/2002 10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/667,170

Applicant(s)

REED ET AL.

Examiner

James Martinell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-39 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____ 6) ☐ Other: ____

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Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-3, 12, 13, and 15, drawn to polypeptides, fragments of polypeptides, and fusion proteins, classified in class 530, subclass 350.
- II. Claims 4-8, and 16, drawn to polynucleotides, oligonucleotides, hybridization methods, and kits, classified in class 536, subclass 23.1 and class 435, subclass 6.
- III. Claim 11, drawn to antibodies to a multitude of antigens, classified in class 530, subclass 387.1.
- IV. Claims 23-28, drawn to antigen presenting cells, classified in class 435, subclass 325.
- V. Claims 29 and 30, drawn to methods of inhibiting the development of cancer using cells, classified in class 424, subclass 93.1.
- VI. Claims 32-34, drawn to methods of removing tumor cells from a biological sample and methods of treatment, classified in class 435, subclass 325.
- VII. Claim 35, drawn to methods of stimulating or expanding T cells by administration of any of a multitude of polypeptides, polynucleotides, or antigens, classified in class 514, subclass 44.
- VIII. Claim 36, drawn to a T cell population, classified in class 435, subclass 325.
- IX. Claims 37-39, drawn to methods of diagnosis by binding to lung tumor proteins, classified in class 435, subclass 7.1.

Claims 9, 10, 14, 17-22, and 31 are ungrouped because those claims are improper multiple dependent claims.

The inventions are distinct, each from the other for the following reasons. The polypeptides, fragments, and fusion proteins of Group I are materially different from, and are therefore independent and distinct from the polynucleotides of Group II, the antibodies of Group III, and the cells of Groups IV and VIII. The polypeptides, fragments, and fusion proteins of Group I are not needed to practice the methods of Groups II, V, or VI. The polypeptides, fragments, and fusion proteins of Group I have uses other than in the methods of Groups VII, X, or IX, *e.g.*, in affinity chromatography. The polynucleotides

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of Group II are materially different from, and are therefore separate and distinct from, the antibodies of Group III and the cells of Groups IV and VIII. The methods of Group II are not needed to make the antibodies of Group III or the cells of either one of Groups IV or VIII. The methods of Group II may be practiced independently of the methods of each of Groups V, VI, VII, and IX. The polynucleotides of Group II have uses other than in the methods of any of Groups V, VI, VII, and IX, *e.g.*, in affinity chromatography. The antibodies of Group III are materially different from, and are therefore separate and distinct from, the cells of Groups IV and VIII. The antibodies of Group III are not needed to practice any of the methods of Groups V, VI, or VII. The antibodies of Group III have uses other than in the method of Group IX, *e.g.*, in affinity chromatography. The cells of Group IV may be used for purposes other than the methods of Groups V, VI, VII, or IX, *e.g.*, the cells may be used to produce specific proteins. The cells of Group IV have properties different from those of the cells of Group VIII, and are thus independent and distinct from the cells of Group VIII. The cells of Group VIII may be used for purposes other than the methods of Groups V, VI, VII, or IX, *e.g.*, the cells may be used to produce specific proteins. The methods of Groups V, VI, VII, and IX, may all be practiced independently of one another.

Claims 1-8, 11-13, 15, 16, 23-30, and 32-39 are drawn to or mention nucleotides, nucleotide constructs, and/or methods requiring the use of nucleotides or nucleotide constructs that contain more than ten individual, independent, and distinct nucleotide sequences in alternative form. Accordingly, these claims are subject to restriction under 35 U.S.C. § 121 as outlined in 1192 O.G. 68 (November 19, 1996). This notice permits the examination of from one to ten independent and distinct nucleotide sequences in a single application based upon USPTO resources.

Applicant is required to select no more than ONE of the individual sequences for examination. The search of the no more than ONE selected sequences may include the complements of the selected sequences and, where appropriate, may include subsequences within the selected sequences (*e.g.*, oligomeric probes and/or primers).

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Should applicant elect a Group that claims or mentions more than one polypeptide sequence, applicants are further required to elect one polypeptide sequence within that Group for examination on the merits.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification and recognized divergent subject matter, restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Martinell whose telephone number is (703) 308-0296. The fax phone number for Examiner Martinell's desktop workstation is (703) 746-5162. The examiner works a flexible schedule and can be reached by phone and voice mail. Alternatively, a request for a return telephone call may be e-mailed to james.martinell@uspto.gov. Since e-mail communications may not be secure, it is suggested that information in such requests be limited to name, phone number, and the best time to return the call.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward, can be reached on (703) 305-4028. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.


James Martinell, Ph.D.
Primary Examiner
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